

P R O C E E D I N G S

(At 9:52 a.m., proceedings commenced.)

(Defendant present.)

THE COURT: Good morning. The Court calls the case of the United States versus John Derek Dugan, Case No. 15-20073. Could I have the attorney appearances, please.

MR. HAVILAND: Robert Haviland for the Government, Your Honor.

THE COURT: Thank you.

MR. DAY: Good morning, Your Honor. Jeff Day appearing on behalf of John Dugan.

THE COURT: Thank you, sir. Mr. Dugan, do you remember earlier today signing a consent to enter a guilty plea form?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In that form you've indicated that you understand that although I'll be taking your guilty plea today, you will be sentenced by judge -- the district judge, who is Judge Ludington, so even though I'm taking your guilty plea, I will not be the judge that sentences you, instead it will be Judge Ludington. Do you understand that process?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And are you okay with the process happening that way?

THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Good. Good. Mr. Day, do you mind if I
2 swear in your client?

3 MR. DAY: No, Your Honor.

4 THE COURT: Mr. Dugan, could you, to the best of your
5 ability, raise your right hand.

6 (Defendant sworn by the Court at 9:53 a.m.)

7 THE COURT: What's your full name, sir?

8 THE DEFENDANT: John Derek Dugan.

9 THE COURT: And how old are you?

10 THE DEFENDANT: Twenty-nine.

11 THE COURT: How far did you get in school?

12 THE DEFENDANT: I got my GED -- I quit in 12th grade
13 and got my GED.

14 THE COURT: Good for you. That's good. Do you have
15 any difficulties reading, writing or understanding English?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Are you under the influence today of any
18 medicine?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Are you under the influence of any drugs
21 or alcohol?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: And have you been treated recently for
24 any mental health issues or addiction to drugs?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Very well. The record should reflect my
2 conclusion that the defendant is capable of tendering a knowing
3 plea. Do you agree, Mr. Haviland?

4 MR. HAVILAND: Yes, Your Honor.

5 THE COURT: And, Mr. Day?

6 MR. DAY: Yes, I do, Your Honor.

7 THE COURT: The charge that you are charged with and
8 will be pleading guilty to today is Count Five of the
9 indictment that charges you with possession with intent to
10 distribute heroin. The maximum possible penalties for that
11 crime are imprisonment of not more than 20 years, supervised
12 release of at least three years, a fine of no more than
13 \$1 million, and it also carries a special assessment of \$100.
14 Do you understand the maximum possible penalties, Mr. Dugan?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have Mr. Day representing you here
17 today. Have you had a chance to go over and discuss the plea
18 agreement with him?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you feel like you understand the terms
21 of the agreement?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And are you satisfied with Mr. Day's
24 advice?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Good. If your guilty plea is accepted,
2 of course, you're giving up some important rights. The most
3 obvious one is the right that you would have for a trial, so by
4 pleading guilty you will not have a trial by either a judge or
5 a jury. Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In addition, there are things that happen
8 at trial that you're also giving up. At trial you'd be
9 entitled to the presumption of innocence, and it would be up to
10 the Government to prove that you are responsible for each of
11 the requirements or elements of the crime beyond a reasonable
12 doubt, but by pleading guilty, you're giving up that right as
13 well. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: In addition, at trial you'd have the
16 continued right to assistance of counsel, and the Court would
17 make sure that you had an attorney represent you at trial, and
18 that attorney would have the right, of course, to see and hear
19 all the witnesses that -- and evidence that the Government
20 presented, and they could cross-examine those witnesses on your
21 behalf, but by pleading guilty, you're giving up those rights
22 as well. Do you understand that, sir?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And, finally, at trial, of course, you
25 would have the right to compel witnesses for your defense, if

1 you chose to do that. On the other hand, if you decided not to
2 present any witnesses, including yourself if you decided you
3 did not want to testify, and did not want to present any
4 evidence, that lack of evidence or your decision not to testify
5 could not be held against you, and the Court would instruct any
6 jury that you have -- that you do not have to testify, you
7 don't have to present any evidence, because the Government has
8 the burden to prove you guilty beyond a reasonable doubt, but
9 because you're pleading guilty, you're giving up those rights
10 as well. Do you understand that, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: There are also civil rights consequences
13 to a guilty plea to a felony. Your right to vote, hold public
14 office, serve on a jury and get a passport will be temporarily
15 affected while you're serving any portion of your sentence.
16 But the other one that lasts forever is your right to possess
17 firearms and ammunition will forever be illegal under federal
18 law after pleading guilty to a felony. Do you understand that,
19 sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Mr. Haviland, would you summarize the
22 important provisions of the Rule 11 agreement for us.

23 MR. HAVILAND: Yes, Your Honor. Thank you. Under
24 the agreement, Mr. Dugan will be pleading guilty to Count Five
25 of the indictment, which charges him with possessing with

1 intent to distribute heroin in violation of -- it should say 21
2 United States Code Section 841(a)(1). The elements of that
3 offense are that the defendant knowingly possessed a controlled
4 substance, that he did so with intent to distribute it and that
5 the substance was, in fact, heroin, a Schedule I controlled
6 substance.

7 The factual basis for Mr. Dugan's guilty plea is set
8 forth at some length on the second page of the plea agreement,
9 and by signing the plea agreement, Mr. Dugan has agreed that he
10 has read, understands that statement of the factual basis, and
11 agrees that it is true to the best of his knowledge and belief.

12 Under the agreement, there are no guideline disputes.
13 The defendant admits that he is a career offender within the
14 meaning of the guidelines and that results in his guideline
15 range being 151 to 188 months, as stated in worksheets that are
16 attached to the plea agreement.

17 The Government has agreed to recommend a two-level
18 reduction for his acceptance of responsibility and a third
19 level for his prompt acceptance of responsibility. The
20 agreement provides that the Court will impose a sentence
21 pursuant to the sentencing statute, 18 USC Section 3553, and in
22 doing so, the Court must consider the sentencing guideline
23 range but, of course, is not bound by that range.

24 The agreement also provides that the Court may not
25 exceed the midpoint of the sentencing guideline range as

1 determined by Paragraph 2B of this agreement.

2 I'm sorry, Your Honor, I forgot to mention a couple
3 of circumstances in which that guideline range of 151 to 188
4 months could be increased. If, for example, the defendant's
5 criminal history works out to be worse than we had ex -- well,
6 that would not affect it actually.

7 THE COURT: He's at the top, isn't he, already? Yes.

8 MR. HAVILAND: He's at the top. That would not
9 affect it. However, if the defendant should not truthfully
10 comply with probation's instructions or provide false
11 information to probation, or otherwise fails to demonstrate
12 acceptance of responsibility, then he could lose the two or
13 three points that have been taken away in the worksheets that
14 are attached to the plea agreement, and in that instance, the
15 defendant agrees that his guideline range would, in fact,
16 increase.

17 The agreement provides, as the Court has previously
18 stated, for a minimum term of supervised release of at least
19 three years and could be as long as life. There will be a
20 special assessment of \$100 as required by federal law. The
21 agreement further provides that the Court may impose a fine in
22 any amount up to \$1 million, which is the statutory maximum.
23 The agreement also provides that restitution is not applicable.

24 If the Court accepts this agreement, the Government
25 will dismiss Counts One through Four of the indictment and will

1 not bring any additional charges based on any of the conduct
2 reflected in the attached worksheets.

3 Now, paragraph 5 is an important provision of the
4 plea agreement. It provides that in exchange for defendant's
5 guilty plea, and acceptance of responsibility, the Government
6 will recommend that the Court sentence defendant to no more
7 than the minimum of the guideline range that is determined
8 pursuant to Paragraph 2B of the agreement.

9 Defendant understands that the Government's
10 recommendation is not binding on the Court, and if the Court
11 decides not to follow that recommendation, defendant will not
12 have the right to withdraw his guilty plea or reduce -- or
13 withdraw from the agreement.

14 The Government may withdraw from the Government only
15 if the Court finds that the correct guideline range is less
16 than that recommended by the Government. The defendant may
17 withdraw from the agreement, and may withdraw his guilty plea,
18 if the Court decides to impose a sentence higher than the
19 maximum allowed, which as I mentioned earlier, is the midpoint
20 of the guideline range that is determined by the Court.

21 Paragraph 7 provides an appeal waiver of which
22 pursuant to Sixth Circuit case law I'd like to read verbatim
23 into the record:

24 Paragraph 7 provides that if the sentence imposed
25 does not exceed the maximum allowed by Part 3 of this

1 agreement, defendant waives the right to appeal his conviction
2 or sentence on any grounds. If the sentence imposed is within
3 the guideline range determined by Paragraph 2B, the Government
4 agrees not to appeal the sentence but it retains its right to
5 appeal any sentence below that range. Nothing in this waiver
6 shall be construed to bar a claim of ineffective assistance of
7 counsel, provided that the defendant properly raises such claim
8 by collateral review under 28 United States Code Section 2255.

9 I believe that states the essential terms of the
10 agreement, Your Honor.

11 THE COURT: Thank you, Mr. Haviland. Mr. Dugan, when
12 you were listening to the Government highlight the important
13 parts of the agreement, did you hear the Government say
14 anything that surprised you or that you did not expect to hear?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Was there anything missing from what the
17 Government said that you think is important and that you
18 expected to hear but you did not hear?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Just to highlight a few of the areas
21 that -- Mr. Haviland did a good job of describing them, but
22 because they are so important, I just want to make sure that
23 you understand them.

24 Your right to either withdraw from the agreement or
25 appeal your conviction, which is today's guilty plea, or your

1 sentence on any grounds hinges on whether the sentence in your
2 case ultimately exceeds the maximum allowed by the agreement.
3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And so then the next logical question is,
6 well, what is the maximum allowed by the agreement, and the
7 answer to that question is the sentence cannot exceed the
8 midpoint of the appropriate sentencing guideline range. If the
9 sentence exceeds the midpoint of the sentencing guideline
10 range, then it has exceeded the maximum allowed by the
11 agreement. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And everyone thinks that the appropriate
14 sentencing guideline range is 151 to 188 months right now. Do
15 you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: That guideline range could change, and
18 the way that it could change, as highlighted by Mr. Haviland,
19 was if after today, after pleading guilty, you make any false
20 statements or withhold information from the probation officer,
21 commit a new offense or otherwise demonstrate that you're not
22 accepting responsibility for this offense, or if you obstruct
23 justice. So do you understand that if any of those things
24 happen, the guideline range could be a higher range, and that
25 would be the appropriate guideline range, and as long as you

1 were sentenced to something not higher than the midpoint of
2 that guideline range, you could not withdraw from this
3 agreement or appeal your guilty plea today or your sentence.
4 Do you understand that, Mr. Dugan?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Good. The other part of this is that the
7 Government has indicated that it will recommend that you get
8 sentenced to the minimum of whatever the appropriate guideline
9 range is, but that is just a recommendation. That does not
10 change or otherwise affect your right to withdraw from the
11 agreement or appeal. Do you understand that, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 MR. HAVILAND: Could I clarify that just a little
14 bit?

15 THE COURT: Sure.

16 MR. HAVILAND: I believe the exact term is that the
17 Government will recommend that the sentence not exceed the
18 minimum of the guideline range. By that we're not indicating
19 any objection to a downward departure.

20 THE COURT: Thank you, Mr. Haviland. And that brings
21 up another thing, which is that even though, you know, these
22 are recommendations, and it's an agreement between you and the
23 Government, Judge Ludington, of course, is not a party to this
24 agreement. He's the sentencing judge, and he does have the
25 power and the authority to sentence you to what he thinks is

1 appropriate, which could be lower than the applicable guideline
2 range, or it could be higher than the applicable guideline
3 range. Do you understand he has that power?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Of course, if he sentences you in excess
6 of the midpoint of the appropriate guideline range, that
7 triggers some rights that you have under this agreement to
8 withdraw, but he does have that authority, and he's not a party
9 to this agreement. Do you understand that, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Very well. Mr. Day, is there anything
12 else that you would like to put on the record as far as this
13 agreement is concerned?

14 MR. DAY: Just briefly. John, you had some questions
15 about the very things that the Court and Mr. Haviland have
16 talked about, the difference between the Rule 11 agreement and
17 the recommendation and the guideline range, correct?

18 THE DEFENDANT: Yes.

19 MR. DAY: And we talked about those -- those things
20 at length, and I -- I did my best to explain the difference
21 between the two to you, correct?

22 THE DEFENDANT: Yes.

23 MR. DAY: And are you confident that you understand
24 the difference between the two?

25 THE DEFENDANT: Yes.

1 MR. DAY: Okay. Thank you, Your Honor.

2 THE COURT: Very well. And I just wanted to mention,
3 too, Mr. Dugan, that your lawyer did a good job in this because
4 it's an unusual thing to see the recommendation that has been
5 achieved here, and it's also -- usually the agreements talk
6 about the top of the guideline range and not the midpoint, so
7 your lawyer has done a good job in negotiating the plea for
8 you.

9 Has anyone made any promises to you other than those
10 that are stated in this agreement?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: In other words, is this agreement, then,
13 the entire agreement between you and your attorney and the
14 Government?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Has anyone told you that Judge Ludington
17 is going to sentence you to a specific number of months?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Has anyone used any force, threats or
20 violence to try to make you plead guilty?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Are you pleading guilty today, Mr. Dugan,
23 because you are guilty?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Are you doing so freely and voluntarily?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Is it your choice and your choice alone
3 to plead guilty today?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Day, would you like to question your
6 client as to the factual basis?

7 MR. DAY: Yes, Your Honor. Mr. Dugan, on or about
8 July 10th, 2014, were you living at 302 Huron Street in
9 Houghton Lake, Michigan?

10 THE DEFENDANT: Yes, sir.

11 MR. DAY: And on that date -- on or about that date,
12 did you sell a small amount of heroin to what turned out to be
13 a confidential informant working with STING?

14 THE DEFENDANT: Yes, sir.

15 MR. DAY: And later that day were you stopped by
16 officers that worked for STING?

17 THE DEFENDANT: Yes, sir.

18 MR. DAY: And when you were stopped, you had
19 approximately eight packets of heroin on you?

20 THE DEFENDANT: Yes, sir.

21 MR. DAY: That you had -- and you admitted to them
22 later that day that you had bought 12 packs of heroin earlier
23 that day?

24 THE DEFENDANT: Yes, sir.

25 MR. DAY: That you had sold some of them, that you

1 had used some of them, that the remaining ones were some for
2 your own use and some for sale to other folks?

3 THE DEFENDANT: Yes, sir.

4 MR. DAY: You admitted also that in the past that you
5 had sold cocaine, Dilaudid and heroin in small quantities to
6 numerous users since being released from jail in 2013, correct?

7 THE DEFENDANT: Yes, sir.

8 MR. DAY: And many of those sales were from your
9 residence at 302 Huron Street in Houghton Lake?

10 THE DEFENDANT: Yes, sir.

11 MR. DAY: We also talked about the career offender
12 and the qualifications for that, correct?

13 THE DEFENDANT: Yes, sir.

14 MR. DAY: And you're admitting on the record here
15 that you qualify under the statute as a career offender?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Haviland, any further questions for
18 the factual basis?

19 MR. HAVILAND: Just to clarify, would you ask
20 Mr. Dugan if he -- the admissions he made to the officers were
21 true.

22 MR. DAY: Those -- the admissions that you gave to
23 the STING officers on the day we talked about, those were true?

24 THE DEFENDANT: Yes, sir.

25 MR. HAVILAND: Thank you.

1 THE COURT: So, Mr. Dugan, at the time you possessed
2 the heroin, you knew it was heroin; is that correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And your -- the address, 302 Huron Street
5 in Houghton, Lake Michigan, is part of the Eastern District of
6 Michigan, Northern Division, is that -- do you have any reason
7 to dispute that?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Very well. I think the factual basis is
10 sufficient. Do you agree, Mr. Haviland?

11 MR. HAVILAND: Yes, Your Honor.

12 THE COURT: Mr. Dugan, we've talked about the
13 charges, the penalties and the rights that you have and are
14 willing to give up by pleading guilty. With all that in mind,
15 how do you want to plead today?

16 THE DEFENDANT: I'd like to plead guilty.

17 THE COURT: Thank you. I find defendant is competent
18 to tender a plea, that the pleas is knowingly, voluntarily and
19 intelligently made and that the offense to which he has pled is
20 supported by an independent basis in fact containing each of
21 the essential elements of the offense. I will, therefore,
22 order preparation of a presentence investigation report. I
23 will recommend that the defendant's plea be accepted, that he
24 be adjudged guilty and have sentence imposed subject to the
25 sentencing judge's review and consideration of the plea

1 agreement pursuant to Rule 11(c) of the Federal Rules of
2 Criminal Procedure.

3 Mr. Haviland, are you satisfied with compliance with
4 Rule 11?

5 MR. HAVILAND: Yes, Your Honor. Thank you.

6 THE COURT: Mr. Day?

7 MR. DAY: I am, Your Honor.

8 THE COURT: The next step then, Mr. Dugan, is you're
9 referred to the probation department for their preparation of a
10 presentence report. Do you have an appointment yet, Mr. Day?

11 MR. DAY: I do not, Your Honor, but I will speak with
12 probation as soon as we're done here.

13 THE COURT: Very well. At that interview, Mr. Dugan,
14 that's one of those times that we talked about in the plea
15 agreement where you'll need to be truthful with them and candid
16 as you have been here, because you, of course, don't want to
17 make any false statements or withhold information that could
18 have the effect of increasing your guideline range. Do you
19 understand that, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Very well. Then I wish you luck with
22 that interview, and if there's nothing further for the record
23 then -- anything, Mr. Haviland?

24 MR. HAVILAND: No, thank you, Your Honor.

25 THE COURT: Mr. Day?

1 MR. DAY: Nothing further, Your Honor.

2 THE COURT: Court is in recess. Thank you.

3 (At 10:11 a.m., court recessed.)

4

5

6

7

8

9

10

11

12

13

14

* * * * *

15

C E R T I F I C A T E

16

I certify that the foregoing is a correct transcript
from the digital sound recording of the proceedings in
the above-entitled matter.

17

18

19

Carol M. Harrison

20

Date: 7-7-2015

Carol M. Harrison, RMR, FCRR
Official Court Reporter
United States District Court
Eastern District of Michigan
1000 Washington Avenue
Bay City, MI 48708

21

22

23

24

25